



The United States Organizations for Bankruptcy Alternatives

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BUSINESS & LABOR

EXHIBIT NO. 1
DATE 3-25-09
BILL NO. HB 318

State Senate
March 25, 2009

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Chairman Joe Balyeat
Business, Labor and Economic Affairs Committee
Montana Senate
P.O. Box 200500
Helena, MT 59620-0500

RE: HB 318 - AN ACT REGULATING DEBT SETTLEMENT PROVIDERS; PROVIDING DEFINITIONS; PROVIDING INSURANCE AND ACCOUNTING REQUIREMENTS FOR DEBT SETTLEMENT PROVIDERS; ESTABLISHING PROHIBITED PRACTICES FOR DEBT SETTLEMENT PROVIDERS; AND PROVIDING REMEDIES.

Dear Chairman Balyeat and Committee Members,

Please accept the present statements by the United States Organizations for Bankruptcy Alternatives ("USOBA") as support text regarding HB 318 in its currently amended form.

USOBA Background

As the oldest active trade association representing more than 140 member companies, USOBA was founded by members of the industry seeking representation specifically for debt settlement and outside of credit counseling and bankruptcy law. USOBA represents and advocates for the fair regulation of the industry and for the protection of consumers.

With record levels of consumers filing for bankruptcy last year, and the credit counseling industry under fire from the IRS, FTC, U.S. Senate and House, consumer advocates and the state legislatures, USOBA members are the last line of help to aid consumers before turning to bankruptcy.

Need for Debt Settlement

USOBA will not attempt to repeat the statistics related to the immense problem of consumer debt, of which the Committee is well aware. However, it will state that consumers are left with only three options when unfortunate circumstances arise and they are left unable to pay their debt amounts when they come due:

Debt Settlement is the option that lies on the continuum between credit counseling and bankruptcy. This may be the best solution for consumers who cannot qualify for credit counseling because: they have either missed payments while enrolled in a credit counseling program; they can no longer make close to their monthly minimum payments to unsecured creditors; they do not qualify under the new rules of bankruptcy; or they prefer to honor their debts to the best of their ability rather than declare bankruptcy.

According to a report entitled Credit Counseling in Crisis, co-authored by National Consumer Law Center and the Consumer Federation of America, from data collected through 2003, the NFCC reported completion rates of only about 26%, as compared to Debt Settlement industry polling, which show over a 50% successful program completion rate.



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Alternatively, bankruptcy can now be used only as a last resort for those who still qualify, and when consumers' debt is completely insurmountable and they can no longer afford to pay any bills.

Support of Fair and Reasonable Regulation

USOBA strongly advocates for regulation for the Debt Settlement industry. However, our directive is to ensure that fair and reasonable regulation includes ample consumer protections; are clear and concise; and reflects accurate expectations and requirements.

USOBA offers support for legislation that provides for Debt Settlement service providers to operate and become licensed, while still maintaining the highest degree of consumer protection. At this time, HB 318 is currently acceptable as amended.

Summary

USOBA members would like nothing more than to be regulated and allowed licensure. Furthermore, HB 318 as amended will do increase the amount of options available to Montana consumers and reduce bankruptcy filings. With the current amendments, this legislation shall provide not only adequate protection, but also effective financial education training for Montana consumers.

We urge Members to vote in favor for the advancement of HB 318. We welcome the opportunity to work closely with any supportive and eager Legislators to ensure that Montana consumers are protected and afforded a choice, not just forced into a lifetime of unwanted circumstances, when seeking debt relief assistance.

If you have any questions, comments or concerns, please do not hesitate to contact the undersigned.

Sincerely,

Heather Carmichael
Legislative Chair, USOBA
512-585-9508 cell
hcarmichael@usoba.org

Debt Settlement Regulation:

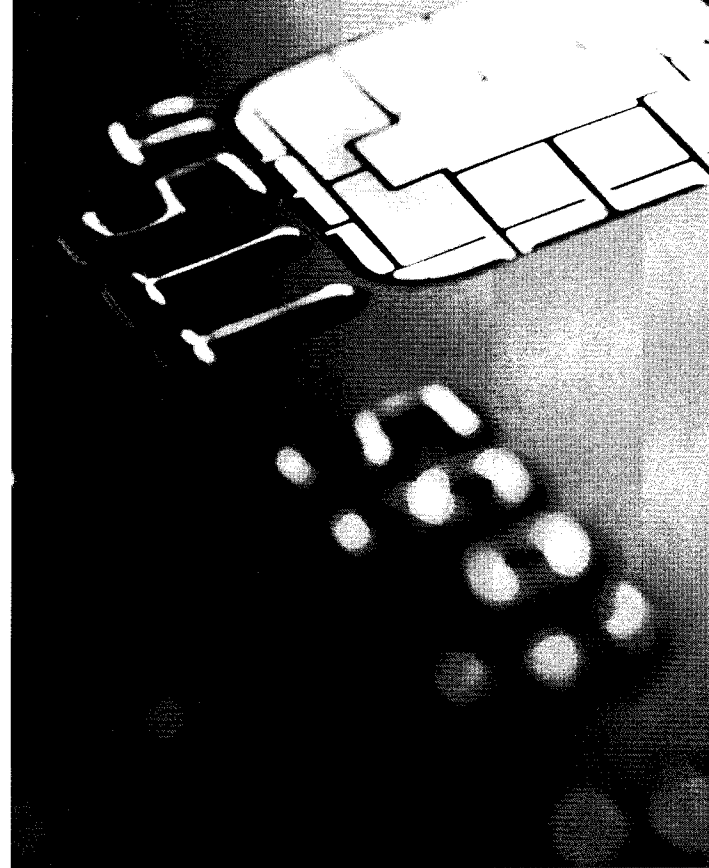
Shaping A New Balance
Between Consumers & Creditors

**Consumers desperately need
legislated debt-relief options.**

Thousands of U.S. consumers will be left in financial ruin without debt-relief options other than bankruptcy:

- **U.S. consumer confidence fell to its lowest level in three months** in Q1/09 as attitudes grew increasingly gloomy over an economic downturn that most expect to last up to five years. [Source: Reuters/University of Michigan Surveys of Consumers]
- **U.S. job cuts soared to 1.25 million – a 25-year high.** [Source: U.S. Labor Department, Bureau of Statistics]
- **Employers cut 577,000 workers from payrolls in December 2008**, bringing total job losses in 2008 to 3.6 million – the most since 1945 – and layoffs jumped 222% over a year ago. [Source: The American Bankruptcy Institute]
- **U.S. consumer bankruptcy filings increased nearly 33% in 2008**, reaching 1.06 million; and U.S. consumer debt hovered at \$2.5 trillion. [Source: The American Bankruptcy Institute]

Debt Settlement has been available since the Sumerians and regulated in the U.S. since the 1960s; however, as the 2009 U.S. unemployment tops 10% in some states, **it is time to tighten regulation of the debt settlement industry to ensure that consumers are, indeed, protected from economic calamity.**



Given today's economy, consumers would be best-served by legislation eliminating debt settlement companies that do not offer:

- *Externally audited financials*
- *Licensing and insurance*
- *A mandate to follow basic regulatory practices put forth by industry associations*

"The most important thing right now is to strike a balance between the lender and the consumer."

~ Steve Bartlett, president and CEO, Financial Services Roundtable

Debt relief has never been more critical

Perhaps the greatest benefit of Debt Settlement is that it gives consumers overwhelmed with unsecured debt a chance to avoid bankruptcy and, in effect, start over by practicing long-term saving habits. [Source: USOBA]

Debt Settlement companies act on behalf of consumers, negotiating directly with creditors to facilitate repayment of consumer debts at a reduced percentage of the total amount owed. In return for their services, the companies generally are paid a monthly service fee by the consumer. Upon completion of a Debt Settlement program, all of the consumer client's debts included in the program are "settled," or resolved with zero balances.

Debt Settlement companies only handle "unsecured" consumer debt, such as credit card debt, personal loans, lines of credit and medical bills. They typically do not handle debts for child support, alimony, taxes or student loans. They serve a need for a segment of consumers with valid hardships – among them medical illnesses, job loss, divorce, or death of a spouse – that is not met by other means of debt management.

Bankruptcy is an outmoded debt-relief option.

African American and Hispanic American homeowners are about 500% more likely to find themselves in bankruptcy than white, non-Hispanic homeowners. [Sources: *Consumer Bankruptcy: Issues Summary*, Harvard Law School, Jan. 7, 2003, and *Analysis by the National Association of Consumer Bankruptcy Attorneys* Feb. 22, 2006.]

For these consumers, options such as credit counseling, debt consolidation or bankruptcy often are unaffordable, undesirable or unavailable because:

Bankruptcy goes against many personal value systems. Most consumers want to pay off what they can afford of their debt, regardless of their life hardships, and avoid the "embarrassment factor" of bankruptcy. [Source: *HispanicBusiness.com*]

Bankruptcy affects one's credit report for up to 7 to 10 years (Chapter 7 & 13).

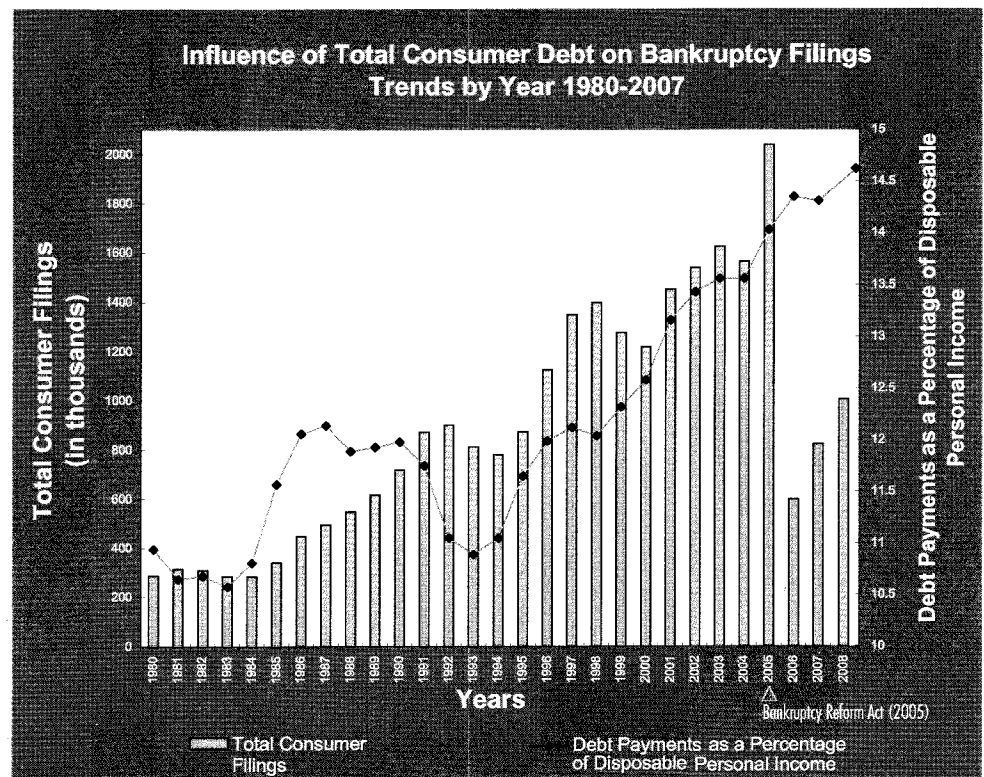
Some consumers do not meet the means test for bankruptcy yet have acquired a level of debt that is not easily repayable. (Residents whose incomes are higher than their state median income are likely ineligible for Chapter 7.)

Bankruptcy is not available if debtor was discharged into bankruptcy within the past two to eight years (actual time depends on whether it is a Chapter 7, 11 or 13).

Bankruptcy is not preferable if the debtor has significant, non-exempt equity in home ownership, i.e., homes valued at more than \$125,000 and purchased in the last 40 months (Chapter 7).

Some consumers are already over-committed to paying taxes, student loans, and current or past-due or child support (Chapter 7 & 13).

Others are unable to repay their full debt in bankruptcy's prescribed 3 to 5 years (Chapter 13) or have significant concerns that their credit card debt will not be dischargeable (Chapter 7 & 13).



African American and Hispanic American homeowners are about 500% more likely to find themselves in bankruptcy than white, non-Hispanic homeowners.

~ Harvard Law School; *Consumer Bankruptcy: Issues Summary*



The Debt Settlement Enrollment Process: *Working Toward Debt Freedom*

**Submitted on behalf of the
United States Organizations
for Bankruptcy Alternatives**

by Heather Carmichael
hcarmichael@usoba.org

“With these challenging economic times, it is more important than ever for everyone to come together and support solutions to get Americans back to a healthier and more financially responsible future.”

~Susan C. Keating
President & CEO
National Foundation for Credit Counseling

“The most important thing right now is to strike a balance between the lender and the consumer.”

~ Steve Bartlett
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Consumers overburdened with debt currently have three available options:

- Choosing debt settlement – a positive debt management solution designed to instill long-term saving habits.
- Undergoing credit counseling by a “non-profit” agency owned by a credit card company;
- Declaring bankruptcy, if they are eligible based on their state’s respective means test.

The specifics below pertain to the enrollment process with a reputable debt settlement service – from assessing clients’ unique financial situation and verifying if debt settlement is the best option, to admitting them to a debt settlement program and starting sustainable financial practices.

Targeted advertising

Marketing efforts for settlement companies differ from those of credit card companies in that the former do not cold-call or mass-mail consumers; rather, they primarily advertise online where people are already looking for debt settlement services, i.e., Google searches for “debt relief.” Ads that make unsubstantiated claims or guarantees are prohibited.

Settlement companies also adhere to industry quality standards set forth by industry associations such as the United States Organizations for Bankruptcy Alternatives (USOBA) and the International Association of Professional Debt Arbitrators (IAPDA), which certifies individual debt arbitrators.

Getting the facts

Much like assessing credit worthiness, debt arbitrators work with prospective clients to calculate their:

- total amount of unsecured debt (i.e., debt not tied to equity);
- current monthly expenses on payments to secured debt
- other monthly expenses
- current employment situation.

A mutual commitment to achieving long-term debt freedom is necessary for clients to be successful, for it is they who actually do the saving of settlement monies. Reputable debt settlement companies do not handle, manage or otherwise control clients' funds.

The National Foundation for Credit Counseling (NFCC) applauds recent collaboration between financial institutions and consumer advocate groups to assist struggling consumers with repayment of their debt obligations and has pledged to continue to lead the initiative.

~ "NFCC Backs Plans to Help Consumers Repay Debts," *PRNewswire*, Nov. 3, 2008.

Is settlement right for you?

Discussing debt relief options is an important part of the debt settlement enrollment process with an accredited company. Reputable settlement companies use required screening processes to verify that only clients who benefit from debt settlement are enrolled.

Debt settlement companies that are certified by ISO – a global federation of national standards bodies whose members have developed and promoted international standards to guarantee excellence since 1947 – use the following criteria to determine if a debt settlement program is appropriate for each prospective client:

- Total unsecured debt is over \$6,000. Anything under \$6,000 does not guarantee a clients' success in a debt settlement program. If a prospective clients' debt is under a level where negotiating favorable results with creditors is unlikely, debt arbitrators advise them against enrolling.
- Budgeting expenses from income, the client is able to make monthly payments toward a savings plan and program fees. Clients need to save their money consistently each month to have funds available to settle and successfully complete a debt settlement program.
- Adherence to state guidelines. To ensure compliance with state-specific laws governing debt management, settlement companies ask prospective clients their state of residence; whether they rent or own a home; whether they currently are late on their debt payments; and if they have ever previously enrolled in a debt settlement program.

For those clients who do not meet these basic criteria, debt settlement companies follow best practices and advise clients that debt settlement is not their best option.

Processing client data securely

Transactions between clients and debt settlement companies maintain the utmost security. Employees sign a zero-tolerance ethics policy mandating honest and ethical conduct in the workplace. This includes relaying a complete and understandable disclosure when verifying clients' account and credit card data.

Clients' Hardship Statement

Many debt settlement companies focus on enrolling clients who have experienced a legitimate hardship that has made it difficult to pay their creditors – for example, job loss, exorbitant medical bills, a divorce or a death in the family – circumstances beyond their control.

Completing a Hardship Statement represents clients' opportunity to share their story as well as provide specifics that often prove powerful when negotiating with creditors. Particular focus is given to clients who express a commitment to remaining debt-free long after completing a debt settlement program. Settlement companies do not want repeat customers.

Fostering financial advocacy

Debt settlement companies typically work with clients for an average of 12 to 36 months. During this time, client services representatives and settlement advisors are in touch with account holders at least once a month to ensure that they are saving the proper amount of funds toward lump-sum settlements of their outstanding credit card balances.

If not, they offer assistance with family budgeting, money management and saving strategies, including suggestions ranging from buying generic food brands to holding a garage sale. Financial advocacy includes researched and well-publicized savings tactics, not legal or financial advice, that are designed to empower clients to make wise financial choices and develop sound spending and savings habits.

Make Consumer Protection a Priority

1. Reputable Debt Settlement companies help people fully understand their programs.

Thorough disclosures — including information on program risks (such as creditors continuing collection efforts by utilizing phone calls or letters, hiring collection agencies, filing lawsuits, and, in some states, garnishing wages) — should be published upfront on company websites, as well as delivered, reviewed and signed by clients at the onset of the program. Debt Settlement companies should educate consumers on financial decisions as they relate to their total debt load, and offer alternatives to people who may not be suitable for a Debt Settlement program.

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~ "NFCC Backs Plans to Help Consumers Repay Debts," PRNewswire, Nov. 3, 1008

2. Some Debt Settlement fees are collected upfront for a reason.

Debt Settlement companies provide services well beyond simply settling debt; in fact, their programs involve significant company service before consumers are ready for the actual settlement process — much like the payment model for consultant retainers or even magazine subscription renewals.

Recent comparisons between credit counseling, debt management and Debt Settlement with the same number of clients show that the latter have up to 10 times the staff due to the high level of live interaction throughout the term of a client's contract.

Consistent communication is necessary to track account changing balances and/or collection agencies throughout the length of the program, which averages 36 s. Since this activity results in a greater level of service per client, some fees must be collected before clients' first settlement.

3. Debt Settlement companies help people pay their debt to the best of their ability.

Among households seeking credit counseling services, 40% report that a medical problem contributed to their debt problem; that single-female headed households and older households are more likely to have a medical problem with financial consequences; and that having health insurance does not necessarily protect households from burdensome health care costs. [Source: Journal of Health Care for the Poor and Underserved, Vol. 15, No. 3, August 2004, pp. 336-346.]

Oftentimes unforeseen hardships and unreasonable creditor fees result in an inability to repay one's debts. The Federal Reserve attempts to hold creditors accountable for actions such as universal default, which penalize debtors so much that they often cannot even catch up on interest payments, let alone resolve their debts. Debt Settlement typically offers a significantly quicker resolution than clients would have found on their own.

"Permitting and approving [a credit concessions test] would be in the best interest of consumers, lenders and the American economy — especially in the current climate."

~Travis Plunkett, Legislative Director, Consumer Federation of America

4. Debt Settlement can assure clients of certain results.

Some Debt Settlement companies offer a Service Guarantee along with disclosing the risk to consumers. Consumers receive a clear, concise settlement estimate, weigh the potential benefits and risks, and make informed decisions about participating in a Debt Settlement plan, as in many other financial, legal and medical service industries. Success in a Debt Settlement program depends heavily upon consumers' own actions, such as their ability to adhere to a savings plan.

5. Debt Settlement affects clients' credit scores only temporarily.

Consumers considering Debt Settlement as an option typically have damaged or are about to have damaged credit. If they are maintaining good credit by using one credit card to pay another, or using another temporary, short-term stop gap, they are likely facing a hit to their credit score due to a high debt-to-income ratio. Consumers who complete Debt Settlement plans develop improved savings and spending habits, and often see improved credit shortly after clearing their debt.

Since all debt management plans affect consumers' credit ratings, Debt Settlement companies should be required to fully disclose program risks to consumers (and those with association memberships already do so). An example would include language stating, "Non-payment of your debts under our program may hurt your credit rating or credit scores; lead your creditors to increase finance and other charges; or lead your creditors to undertake activity, including lawsuits, to collect the debts."

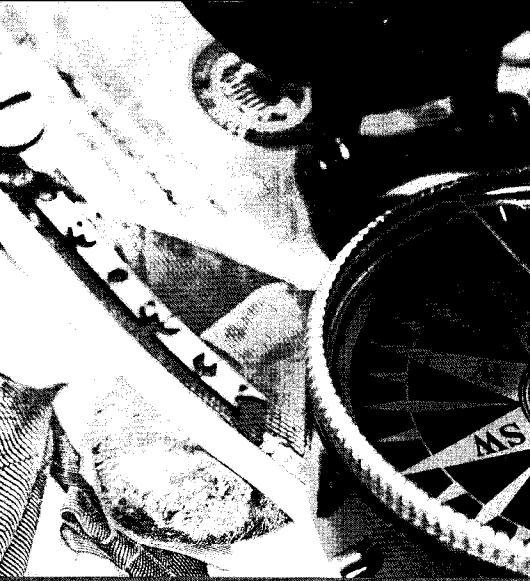
"With these challenging economic times, it is more important than ever for everyone to come together and support solutions to get Americans back to a healthier and more financially responsible future."

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United States Organizations for
Bankruptcy Alternatives website,
<http://www.usoba.org>

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